

bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.

(2) *Captive customers* means any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.

(3) *Franchised public utility* means a public utility with a franchised service obligation under state law.

(4) *Market-regulated power sales affiliate* means any power seller affiliate other than a franchised public utility, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are regulated in whole or in part on a market-rate basis.

(5) *Non-utility affiliate* means any affiliate that is not in the power sales or transmission business, other than a local gas distribution company or an interstate natural gas pipeline.

(b) The provisions of this subpart apply to all franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities.

§ 35.44 Protections against affiliate cross-subsidization.

(a) *Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act.

(b) *Non-power goods or services.*

(1) Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(3) of this section, a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

(3) A franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost.

PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

AUTHORITY: 5 U.S.C. 551-557; 16 U.S.C. 791a-825r; 31 U.S.C. 9701; 42 U.S.C. 7107-7352.

§ 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

(a) *Definitions.* (1) *Affected party* means each affected electric utility, each affected State regulatory authority, and each affected Federal power marketing agency.

(2) *Affected electric utility* means each electric utility that has made arrangements for the sale or purchase of electric energy to be transmitted pursuant to the particular application for transmission services, and each transmitting utility, as defined in section 3(23) of the Federal Power Act, 16 U.S.C. 796(23), being requested to transmit such electric energy.

(3) *Affected State regulatory authority* means a State regulatory authority, as defined in section 3(21) of the Federal Power Act, 16 U.S.C. 796(21), regulating the rates and charges of each affected electric utility.

(4) *Affected Federal power marketing agency* means a Federal power marketing agency that operates in the service area of each affected electric utility.

(b) *Additional filing requirements.* Any person filing an application for transmission services pursuant to section 211 of the Federal Power Act, 16 U.S.C. 824j, shall include the following:

(1) The applicant must include a form of notice of the application suitable for publication in the FEDERAL REGISTER in accordance with the specifications in §385.203(d) of this chapter. The form of notice shall be on electronic media as specified by the Secretary.

(2) A sworn statement that actual notice, including the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought (including the proposed dates for initiating and terminating the requested transmission services, the total amount of transmission capacity requested, a brief description of the character and nature of the transmission services being requested, and whether the transmission services requested are firm or non-firm) has been served, pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, §385.2010 of this chapter, on each affected party. Such statement shall enumerate each person so served.

(c) *Other filing requirements.* All other filing requirements of the Commission's Rules of Practice and Procedure remain in effect for applications under this section.

[Order 560, 58 FR 57737, Oct. 27, 1993, as amended by Order 593, 62 FR 1283, Jan. 9, 1997; Order 647, 69 FR 32438, June 10, 2004]

EFFECTIVE DATE NOTE: By Order 560, 58 FR 57737, Oct. 27, 1993, §36.1 was added. The section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

Sec.

37.1 Applicability.

37.2 Purpose.

37.3 Definitions.

37.4 [Reserved]

37.5 Obligations of Transmission Providers and Responsible Parties.

37.6 Information to be posted on the OASIS.

37.7 Auditing Transmission Service Information.

37.8 Obligations of OASIS users.

AUTHORITY: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

SOURCE: Order 889, 61 FR 21764, May 10, 1996, unless otherwise noted.

§37.1 Applicability.

This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to transactions performed under the *pro forma* tariff required in part 35 of this chapter.

§37.2 Purpose.

(a) The purpose of this part is to ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis from any Transmission Provider. These rules provide standards of conduct and require the Transmission Provider (or its agent) to create and operate an Open Access Same-time Information System (OASIS) that gives all users of the open access transmission system access to the same information.

(b) The OASIS will provide information by electronic means about available transmission capability for point-to-point service and will provide a process for requesting transmission service. OASIS will enable Transmission Providers and Transmission Customers to communicate promptly requests and responses to buy and sell available transmission capacity offered under the Transmission Provider's tariff.

§37.3 Definitions.

(a) *Transmission Provider* means any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(b) *Transmission Customer* means any eligible customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service.

(c) *Responsible party* means the Transmission Provider or an agent to whom the Transmission Provider has delegated the responsibility of meeting any of the requirements of this part.